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WASHINGTON DC 20004

MAILED
JUN 09 2010
OFFICE OF PETITIONS

In re Application of :
Samuel Chun-Lap Lo, et al. :
Application No.: 10/756,768 : ON PETITION
Filed: January 14, 2004 :
Attorney Docket No.: P69448US0 :

This is a decision on the renewed petition filed April 22, 2010, under 37 CFR 1.137(b) to revive the above-identified application for copendency with a continuing application.

The petition is **GRANTED**.

The application became abandoned on December 16, 2006 for a failure to timely reply to a non-final Office action, mailed September 15, 2006. A Notice of Abandonment was subsequently mailed on April 4, 2007. On December 14, 2009, a petition under 37 CFR 1.137(b) was filed; however, the petition was dismissed in a decision mailed March 18, 2010. On April 22, 2010, the present petition was filed, along with a Letter of Express Abandonment and a 2-month petition for extension of time.

Petitioner seeks revival solely for obtaining copendency with continuing application No. 11/656,421 filed January 23, 2007, in that the necessary continuity inadvertently was not maintained at that time.

It is noted that petitioner submitted fees totaling \$1,055 for the present petition and a 2-month extension of time. The offer to make the belated payment of the 2-month extension of time fee under 37 CFR 1.136(a) is unnecessary and no petition fee is required for a renewed petition to revive. Extensions of time under 37 CFR 1.136 are available only if asked for "prior to or with the response." In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired, i.e., December 16, 2006. Accordingly, the \$245 extension of time fees and the \$810 petition fees submitted with the renewed petition are subject to refund.

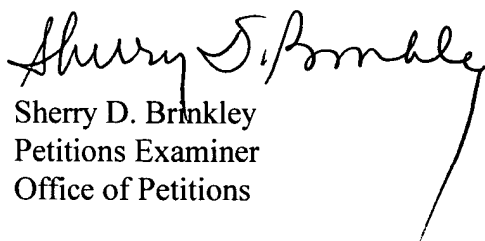
Any request for refund must include a copy of this decision and be mailed to Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 or faxed to the Customer Service Help Desk at (571) 273-6500.

The above-identified application has been abandoned for an extended period of time. The U.S. Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178; 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The petition now satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of \$810; and (3) an adequate statement of unintentional delay.

Since this application is being revived for purposes of continuity with application No. 11/656,421, and continuity having been established by this decision reviving the above-captioned application, the above-captioned application is again abandoned in favor of the continuing application.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3204.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions